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5 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**
6 **OF THE STATE OF WASHINGTON**

7 In the Matter of Enforcement Action
8 Against

NO. 02-286

9 Don Bivins

STIPULATION AS TO FACTS

10 Marilyn Westlake

Respondents.

11 COMES NOW the parties hereto, the Public Disclosure Commission Staff, by and
12 through its attorneys of record, ROB McKENNA, Attorney General and LINDA A.
13 DALTON, Senior Assistant Attorney General, and the Respondents, DON BIVINS and
14 MARILYN WESTLAKE, appearing through their attorneys of record, JUDITH ZEIDER,
15 Chief Assistant City Attorney for the City of Vancouver and BRIAN H. WOLFE, Attorney at
16 Law and submit this Stipulation as to Facts in this matter.

17 **FACTS**

18 1. On January 30, 2002, the Public Disclosure Commission received a complaint from
19 Kelly Hinton alleging that officials of the City of Vancouver had used the facilities of the
20 Vancouver Fire Department to support a February 5, 2002 Emergency Medical Services
21 (EMS) levy. The complaint also alleged that city officials had used public facilities to support
22 the levy election by posting promotional material on the committee's web site and by
23 developing a business plan to promote the levy election.

24
25 2. Respondent Don Bivins is the Fire Chief for the Vancouver Fire Department (hereafter
26 VFD).

1 3. Respondent Marilyn Westlake is the Public Education Coordinator for the VFD.

2
3 4. The VFD and Clark County Fire District 5 (hereafter District 5) consolidated operations
4 in 1994. District 5 has one administrator, Respondent Marty James, and a board of Fire
5 Commissioners. District 5 has independent taxing authority and contracts with the VFD for its
6 fire suppression and prevention and Emergency Medical Services (EMS). District 5 operates
7 the Northwest Fire Training Center, a regional training center for fire departments.

8 5. On November 5, 2001, the Vancouver City Council and Clark County Fire District 5
9 Commissioners held a joint workshop to discuss an EMS levy.

10
11 6. On November 5, 2001, the Vancouver City Council voted to place an EMS levy before
12 its voters for additional fire department funding pursuant to RCW 84.52.069, the proceeds
13 from which would be used for emergency medical services, including related personnel costs,
14 training for such personnel, and related equipment, supplies, vehicles and two new fire stations
15 needed for the provision of emergency medical services. This levy vote was held on February
16 5, 2002 and failed.

17 7. On November 6, 2001, Clark County Fire District 5 Commissioners voted to place a
18 companion EMS levy on the February 5, 2002 ballot. The levy failed.

19
20 8. Following the defeat of the February 5, 2002 EMS levies, District 5 ran an EMS levy in
21 September 2002 that was also defeated.

22 9. The City of Vancouver has not placed another EMS levy before the voters since the
23 February 5, 2002, ballot.

24
25 10. **VFD Business Plan**
26

- 1 a. On January 24, 2001, Pat McDonnell, City Manager directed all city departments to
2 develop a Business Plan. The Parks, Police and Fire Departments were instructed to
3 complete their respective Business Plan in 2001.
4
- 5 b. Overall, the VFD Business Plan involved a concerted effort by the VFD to quantify
6 information about its own existing business operations, to get public and Vancouver
7 City Council input on VFD services, and to gain community understanding of and
8 feedback about its mission and programs. The VFD Business Plan studied the kinds
9 of programs and services being provided, and the impact of population growth on
10 program services and whether VFD should even perform certain services, including
11 EMS.
12
- 13 c. The VFD Business Plan did not detail funding sources, such as the EMS levy that was
14 later placed on the February 5, 2002 ballot.
15
- 16 d. The cost of the proposed levy was 50 cents per \$1,000 of assessed valuation for a six
17 year period to generate approximately \$6,250,000 per year for a total of \$37,500,000
18 over the six year period of the levy.

19 **11. Community Education and Outreach**

20 **A. Fire Department Publications**

- 21 i. District 5 had a long history of producing regular newsletters to the public,
22 commencing before the 1994 consolidation and continuing to the present, although
23 the number and frequency varied after consolidation.
24
- 25 ii. Beginning in the summer of 2001, Ms. Westlake produced three *Lifeline*
26 newsletters prior to the February 5, 2002 EMS levy election.

1 iii. Chief Bivins, on behalf of the VFD, in conjunction with Mr. James on behalf of
2 District 5, approved the three *Lifeline* newsletters that were published prior to the
3 February 5, 2002 EMS levy election.

4
5 iv. District 5 paid for the Summer 2001 and Winter 2002 newsletters and the VFD
6 paid for the Fall 2001 newsletter. The dates of distribution and cost for the three
7 newsletters were as follows:

- 8 ▪ Summer 2001 – Distributed on June 29, 2001 at a cost of \$21,392 plus 20 hours
9 of staff time valued at \$480.
- 10 ▪ Fall 2001 – Distributed on September 12, 2001 at a cost of \$19,883 plus 20
11 hours of staff time valued at \$480.
- 12 ▪ Winter 2002 – Distributed January 14, 2002 at a cost of \$19,911 plus 20 hours
13 of staff time valued at \$480.

14 v. The total cost of the three newsletters was \$61,186, excluding staff time. The
15 VFD paid for \$19,883 and District 5 paid for \$41,303. VFD staff time to produce
16 the newsletters was valued at \$1,440.

17 vi. The three *Lifeline* newsletters produced before the EMS levy election were
18 distributed to residents within the City of Vancouver and the boundaries of
19 District 5.

20 vii. Since the election, the *Lifeline* newsletter has only been printed one time, in
21 July 2003.

22 viii. In September 2001, District 5 also produced a newsletter entitled *News @ 5*.

23 ix. The Winter 2002 *Lifeline* newsletter was considered by VFD to be a basic fact
24 sheet for residents concerning the February, 2002 EMS levy.
25
26

1 x. In addition, Chief Bivins authorized an EMS levy FAQ (Frequently Asked
2 Questions) sheet that was made available as a handout to patrons at the fire stations
3 beginning December 7, 2001. The FAQ and Winter 2002 *Lifeline* were both also
4 posted on the VFD website, as well as were the prior Summer 2001 and Fall 2001
5 *Lifelines*.

6 B. VFD Website

7 i. Ms. Westlake updated and enhanced the VFD website with information about
8 the VFD, the VFD Business Plan, and the EMS levy.

9 ii. The VFD website contained multiple pages that referenced the EMS levy prior
10 to the election. One page entitled, "Every Second Counts" included the following
11 statement: *"On heart attack calls: If firefighters don't arrive in four minutes or*
12 *less, the chances of saving a heart attack patient declines."* It goes on to say,
13 *"Last year ... the Vancouver Fire Department went on 1,771 heart attack calls.*
14 *Firefighters arrived within 4 minutes just 38 percent of the time. Why? Because*
15 *Fire Department resources haven't kept pace with growth in the community. A*
16 *proposed EMS levy would help address the problem by funding three quick*
17 *response vehicles to help firefighter-EMTs and paramedics get there faster."*

18 iii. Another page on the website entitled "Fire Department Business Plan"
19 contained a link to a separate December 7, 2001 FAQ. The web page also used
20 the following language: *"Gallopig growth over the past two decades has*
21 *overwhelmed and exceeded the capacity of the Vancouver Fire Department...*
22 *Resources have remained static... At the same time community demands changed*
23 *substantially. Call volume grew exponentially. And, critical response times*
24 *decayed to levels inconsistent with other cities of similar size."*

25 iv. Another page on the website entitled "Two-alarm fire Nov. 14, 2001" included
26 the following statements: *"A serious two-alarm apartment fire at 4408 Gibbons*
Street consumed all of the VFD's firefighting/Emergency medical Services

1 *resources for several hours early Wednesday evening. Once again, crews from*
2 *neighboring fire districts had to step in to try to cover other emergency calls...*
3 *This frustrating condition is summed up by Chief Scott, 'It's happening more and*
4 *more often – about monthly – where we can't handle our calls. It's an unsafe*
5 *situation for both the taxpayers and the firefighters.' ” ... “The VFD, together*
6 *with Clark County Fire District 5, will conduct a Fire-Emergency Medical*
7 *Services (EMS) levy Feb. 5, 2002 to raise dedicated funds for: three new EMS*
8 *rescue units; two new fire stations; and catch-up provisions to meet safety,*
9 *training and staffing needs.”*

10 C. News Releases

11 i. Ms. Westlake issued fifty seven (57) news releases in 2001 and 2002, twenty
12 eight (28) of which were issued between January 1, 2001 and the levy election
13 February 5, 2002.

14 ii. Chief Bivins authorized the VFD to issue two news releases which were noted
15 in the Notice of Administrative Charges: one on December 14, 2001 and one on
16 February 5, 2002, the day of the levy election.

17 iii. December 14, 2001 news release: *“A ‘Slice of American Pie’ for Vancouver*
18 *Firefighters.”*

19 a. The VFD issued this news release highlighting an effort initiated by a
20 citizen, Betty Lane, who baked and sold pies to raise money to support
21 Vancouver firefighters. The December 14, 2001 news release about Betty
22 Lane made no mention of the EMS levy or of fundraising efforts for the
23 levy campaign.

24 b. The news release was posted to the VFD website on December 14,
25 2001.

1 c. On December 20, 2001, Ms. Lane donated the money she had raised to
2 the "Yes for Fire-EMS" levy committee.

3 d. Neither Ms. Westlake, who volunteered for the levy committee and who
4 was responsible for the VFD website, nor Chief Bivins, who also
5 volunteered for the levy committee, had the December 14, 2001 news
6 release removed from the VFD website once it became clear that Ms. Lane
7 had made a campaign contribution.

8 iv. February 5, 2002 News Release: "*Rising system demand in 2001 has further*
9 *slowed fire department response times.*" The charges related to the February 5,
10 2002 news release have been withdrawn.

11 D. VFD Video Footage Used by Levy Committee

12 i. In the spring of 2001, Chief Bivins directed Ms. Westlake to coordinate the
13 development of a VFD informational video for use in making presentations to
14 the public about VFD activities.

15 ii. In June 2001, Ms. Westlake contacted Jim Demmon, Manager of the
16 City/County government cable access (CVTV – Channel 23) to produce the
17 video. Ms. Westlake gave Mr. Demmon a copy of a previously prepared VFD
18 Power-Point presentation to assist him in writing the script. Mr. Demmon
19 understood that Ms. Westlake wanted the video by the end of the summer, so
20 rather than assign out the work, he wrote the script himself. The script was
21 given to Ms. Westlake on June 26, 2001. She reviewed the script, along with
22 existing video footage of fire department activities, and told Mr. Demmon that
23 new video footage was needed.

24 iii. Mr. Demmon then assigned the project to Video Producer Steve Harris, and in
25 late July and early August, 2001, additional video footage was taped. Without
26 receiving feedback, Mr. Demmon created a "rough cut" of the video and gave
it to Ms. Westlake on September 10, 2001. Mr. Demmon, along with one

1 other staff member, spent 84 hours on the project at a cost of \$1,482.72. The
2 draft video was approximately two to three minutes in length and contained
3 updated shots of EMS paramedic equipment and VFD personnel and trucks,
4 with voice-over descriptions of VFD services and average response times.
5 Ms. Westlake did not provide additional feedback to Mr. Demmon or request
6 that a finished informational video be produced. The VFD informational
7 video has not been finished.

8 iv. Chief Bivins was an active member and media contact for "Yes for Fire-
9 EMS", a political committee formed to support passage of the February 5,
10 2002 EMS levy.

11 v. In December 2001, Jeff Williams, a media consultant for the levy committee,
12 asked Chief Bivins about what materials he knew of which could be used in
13 producing a TV commercial for the levy committee. Chief Bivins told Mr.
14 Williams that Ms. Westlake, who was also a campaign volunteer for the levy
15 committee, would be able to help him.

16 vi. In early January 2002, Mr. Williams contacted CVTV and made a public
17 records disclosure request for EMS footage. Mr. Demmon provided EMS
18 video footage to Mr. Williams that had been prepared for the VFD
19 informational video, including "B roll footage" typically used with voice-
20 overs in video production. At the time Mr. Williams made the request, Mr.
21 Demmon was aware that the EMS footage shot earlier in 2001 for the VFD
22 informational video was on CVTV's edit system and already loaded into the
23 computer, making it the most convenient EMS video for CVTV staff to
24 provide to Mr. Williams. After Mr. Williams reviewed the existing footage,
25 he requested and received specific footage, based on his needs.

26 vii. CVTV staff routinely make copies of the specific footage requested by
members of the public.

1 viii. Mr. Williams then created a TV commercial using the video footage.
2 The footage included images of VFD equipment and personnel engaged in a
3 variety of staged VFD related activities.

4 ix. Mr. Williams estimated that it would have cost the levy campaign
5 approximately \$20,000 to produce the same video without the stock footage
6 provided by CVTV.

7 x. The video footage was not listed as stock footage in the stock footage
8 database of CVTV.

9 xi. VFD officials, including Chief Bivins, Ms. Westlake and the CVTV
10 employees working on the project, were aware that the video footage shot
11 during the summer of 2001 existed.

12 xii. The conversations of Chief Bivins and Ms. Westlake with Jeff Williams took
13 place outside work hours and away from City premises.

14 xiii. CVTV would have given the footage to anyone requesting it.

15
16 **14. Fire Station Reserve Fund**

17
18 a. Prior to the February 5, 2002 EMS levy election, the City had approximately \$2
19 million in reserve capital funds that had been transferred to it from District 5
20 pursuant to the 1994 City/District 5 Consolidation Agreement. These funds had
21 been targeted to build a fire station and were put in a set aside fund.

22 b. They were earmarked by the Agreement for construction of a future fire station in
23 the north section of the Fire District, known as the "Station 87" area.

24
25 c. In the summer of 2003, the VFD finalized plans to begin construction of one new
26 fire station (Station 87), funded jointly by the City and District 5.

1 d. Although land had been purchased for the Station 87 location, and some site work
2 had been performed, the City did not start construction due to lack of funds to fully
3 fund construction and to staff the station, once constructed.
4

5 e. As of the February 5, 2002, EMS levy ballot, the amount in the reserve fund was
6 \$1,740,000.

7 **15. Use of City Facilities – Chief Bivins**

8 **f. City Vehicle - American Medical Response (AMR) Meetings**

9 i. Chief Bivins volunteered to the PDC Compliance Director Phil Stutzman that
10 he had attended a series of meetings with American Medical Response staff
11 (hereafter AMR). He drove his VFD vehicle to the meetings to conduct
12 official city business.
13

14 ii. AMR is a private ambulance company which has a contract with Clark
15 County EMS District #2 for ambulance transport service for Vancouver/Clark
16 County.
17

18 iii. AMR and VFD crews both respond to the same medical emergencies and
19 work side-by-side, making communications between AMR and VFD vital to
20 public safety.

21 iv. The AMR Operation Director called a lunch meeting with Chief Bivins in
22 November or December of 2001. Chief Bivins did not know the purpose of
23 the meeting. The AMR Operation Director, among other things, expressed
24 concern over the type of vehicle which might be purchased if the EMS levy
25 passed. During the meeting, Chief Bivins formed the impression that the
26

AMR Operation Director was implying that AMR's financial support of the

1 EMS levy would be a *quid pro quo* if VFD changed the type of vehicle it
2 planned to purchase.

3 v. Later, at a regularly scheduled meeting thereafter involving AMR and VFD
4 management personnel, including the AMR Regional Vice President, Chief
5 Bivins informed AMR that there would be no change in the vehicles to be
6 purchased. AMR personnel asked how it might support the levy. Chief
7 Bivins first told them that would be up to them.
8

9 b. Storage of campaign materials in VFD vehicle: Chief Bivins stored campaign
10 materials in his VFD vehicle, and on two occasions distributed the material to off-
11 duty fire fighters who had volunteered to work phone bank operations for the levy
12 committee. Chief Bivins passed out this material to levy campaign workers while he
13 was on duty with the VFD.
14

15 c. Use of Telephone and Computer, and Office Space for Campaign Purposes

16 i. Chief Bivins contacted levy campaign workers using his VFD telephone on
17 several occasions to discuss campaign related activities. Chief Bivins stated
18 that he contacted Mike Worthy and Bob Knight, Co-Chairs of the "Yes for
19 Fire-EMS" levy committee, and Marty James, District 5, who volunteered for
20 the levy committee.

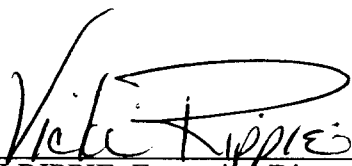
21 ii. Chief Bivins used his VFD computer to forward levy campaign-related emails
22 that had been sent to his City computer to his personal home e-mail account
23 so that he could respond to them from his home computer during off-duty
24 time. He also linked his work email to his home email and communicated via
25 email during his lunch hour on campaign issues. He stated he did this
26 approximately six times. He provided PDC Staff with copies of the two levy
campaign e-mails that he was able to retrieve from his home computer, one of

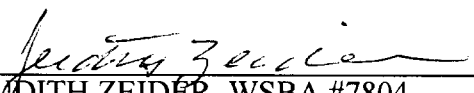
1 which he sent November 29, 2001 from his VFD computer to four individuals
2 and to his home email account.


3 iii. Chief Bivins contacted PDC Compliance Director Stutzman and stated that on
4 one occasion, sometime between December 2001 and January 2002, he was
5 contacted by Richard Curtis, a VFD fire captain, about storing levy campaign
6 materials in Captain Curtis' office. Chief Bivins acknowledges that he did not
7 order Captain Curtis to refrain from storing levy materials in his (Captain
8 Curtis') office and that by failing to do so, he gave tacit approval for Curtis to
9 leave the materials in an office at VFD.

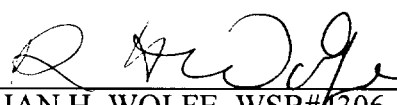
10 16. **Use of VFD Computer for Campaign Purposes by Marilyn Westlake.** Ms. Westlake,
11 while a volunteer for the "Yes for Fire-EMS" levy committee, used her VFD computer and
12 printer at work to finalize and print a copy of a two page campaign brochure in support of
13 the EMS levy campaign.

14 Stipulated to and dated this 31st day of March, 2005.

15
16 
17 VICKI RIPPİE, Executive Director
18 Public Disclosure Commission

19
20 
21 JUDITH ZEİDER, WSBA #7804
22 Chief Assistant City Attorney - City of Vancouver
23 Attorney for Bivins and Westlake


Attorney for M. Varnes

24 
25 BRIAN H. WOLFE, WSB#4306
26 Attorney at Law
Attorney for Bivins and Westlake